

# Exhibit B

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**From:** MCCALLUM, Robert  
**Sent:** Friday, August 2, 2024 3:24 PM  
**To:** Goodnow, Christopher C.; Izaak Earnhardt; dpearl@axinn.com; SESSIONS, Justina (JKS); BRANDON, Eric; SALEM, Sara; Haws, Claire L.; Steinthal, Russell M.; Yung, Eva H.; MURRAY, Sean; FORKNER, Constance; STEYL, Matthew  
**Cc:** Philip Korologos; Noss, Walter; O'Keefe, Carol; svash@hermanjones.com; CJ Jones; Candace Smith; John Herman; Mark C. Mao; Clerkin, Stephanie; Scott Grzenczyk; tmaya@ahdootwolfson.com; Jordan Elias; Thorne, John; Bird, Daniel G.; Maier, Eric J.  
**Subject:** RE: Google Display Ads - Request for Meet & Confer and Proposed Agenda

Counsel,

I write in response to MDL Plaintiffs' request for a 3.5 hour deposition of [REDACTED]. Google will not agree to that deposition at this time because there is no good cause to re-open fact discovery and no good cause for MDL Plaintiffs to receive even more depositions above the Court's cap.

MDL Plaintiffs claim an entitlement to a 3.5 hour deposition of [REDACTED] on any topics of their choosing because Google (i) amended its initial disclosures on June 27 to list [REDACTED]; and (ii) produced a declaration from [REDACTED] (GOOG-AT-MDL-C-000076497) on July 11. But the amendments to the initial disclosures were timely—and do not provide good cause for another deposition—because they were made within the fact discovery period. Although these timely disclosures occurred near the end of the fact discovery period, it is inherent in a limited fact discovery period that some information will be disclosed sooner and some will come later. The mere disclosure of information at the end of discovery does not create good cause. As MDL Plaintiffs have recognized, the Court's deposition limit required the parties to prioritize which depositions they sought, such that MDL Plaintiffs could not depose every witness identified on Google's initial disclosures. ECF No. 755 at 8. Further, because [REDACTED] was a document custodian, MDL Plaintiffs had more than 80,000 documents from his files before the end of 2023. Plaintiffs should have been aware of his areas of responsibility and could have sought leave to depose him before fact discovery closed.

To the extent that you believe that the July 11 declaration justifies [REDACTED]'s deposition, we would note that (a) the declaration discusses a single topic (cookie matching) that is not alleged to be the basis of the claims in this case; and (b) MDL Plaintiffs have proposed a half-day deposition with no limitations on the topics on which they would question [REDACTED]. The request for an unbounded 3.5 hour deposition is entirely disproportionate to any alleged need to test the limited supplemental information provided in [REDACTED] [REDACTED]'s July 11 declaration. To the contrary, MDL Plaintiffs are in a better position with the production of this declaration because they have access to *more information* via the declaration than they would have had absent its production.

Even so, to avoid burdening the Court with this issue, Google will agree that, if Google includes [REDACTED] [REDACTED] on its trial witness list, MDL Plaintiffs may take his deposition on the topic discussed in the July 11 declaration for a period of up to 2 hours.

Kind regards,  
 Rob

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**Subject:** RE: Google Display Ads - Request for Meet & Confer and Proposed Agenda

Rob:

I write on behalf of MDL Plaintiffs regarding the proposed deposition of [REDACTED]. It has been a week since Plaintiffs requested Google's position regarding the deposition. Absent Google's agreement, we will file with the Court tomorrow after close of business.

Regards,  
Chris

**Christopher C. Goodnow**

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**Subject:** [EXTERNAL] RE: Google Display Ads - Request for Meet & Confer and Proposed Agenda

Rob –

As discussed on our call this morning, the expert reports from EDVA and EDTD are subject to RFPs served on Google in the MDL. MDL Plaintiffs would propose that Google produce those expert reports to Plaintiffs on September 14, 2024, or the day after Plaintiffs' opening expert reports are served, whichever date is later. Separately, and for the avoidance of doubt, Plaintiffs reserve the right to use for any purpose, including in opening expert reports, any material ordered unsealed in EDVA or EDTD.

Thank you.

Izaak

**Izaak Earnhardt**  
(he/him)

Associate

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**Subject:** RE: Google Display Ads - Request for Meet & Confer and Proposed Agenda

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Izaak –

We are looking into the various issues raised in your email. We have limited availability this week because various members of the Google team are travelling, but we can make ourselves available on Wednesday from 9am to 10am ET. If that doesn't work, we are generally available on Friday and suggest we speak at 10am ET.

At the meet and confer we would like to get Plaintiffs' position on the attached data transfer proposal which we circulated on June 4.

Kind regards,  
Rob

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**From:** Izaak Earnhardt <[iearnhardt@BSFLLP.com](mailto:iearnhardt@BSFLLP.com)>  
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**Subject:** Google Display Ads - Request for Meet & Confer and Proposed Agenda

Rob, David –

MDL Plaintiffs have identified several outstanding or new common issues that warrant a meet and confer. We would like to schedule a meet and confer Friday 7/26 or Monday 7/29. MDL Plaintiffs are generally available Friday and before 3pm ET on Monday 7/29.

The issues for discussion are listed below:

1. Google's position on EDVA Expert Discovery: During our June 28 meet and confer, Google stated that it would follow up regarding its position on "whether there are circumstances in which Expert Discovery may or should be shared between the Coordinated Cases." Nearly a month has passed, and Plaintiffs have not yet received Google's position on this issue. Please be prepared to provide Google's position at the meet and confer or do so in writing beforehand.
2. Authenticity Stipulation: MDL Plaintiffs sent a proposed revised stipulation on July 9, 2024. Google has not responded. Please be prepared to discuss Google's position regarding the stipulation.
3. Preliminary Exhibit Lists: As Google is aware, at the June 20 conference, the Court ordered the parties to develop and submit to the Court a schedule for submission of preliminary anticipated exhibit lists. Plaintiffs would like to begin preliminary discussions of a potential schedule.
4. Google's RFA Responses: During the June 20 conference, counsel for Google represented to the Court that it would "answer" fact RFAs if the number were reduced. The Court reduced the number of RFAs to 80 based on that representation. In the responses served on July 12, Google failed to answer or offered improper objections to a substantial number of the fact RFAs served. Those objections and refusals to answer were improper, and Plaintiffs may raise the issue with the Court. Recognizing that this may be a more protracted discussion, we are willing to discuss this issue in a separate meet and confer.
5. 30(b)(6) Deposition Follow-Ups:
  - a. During certain of the 30(b)(6) depositions, Plaintiffs requested that Google provide certain documents used to prepare the witnesses. Please be prepared to discuss Google's positions on those requests.



- b. Google's failure to designate a witness on topic 17.c and failure to designate a witness with knowledge of YouTube.
- 6. [REDACTED] Deposition: Google served amended initial disclosures one day before the close of fact discovery which added [REDACTED], and it produced in July, without notification and after the close of fact discovery, a declaration from [REDACTED]. See GOOG-AT-MDL-C-000076497 (produced on July 11, 2024). Google's belated production of the declaration from [REDACTED] and belated notification to Plaintiffs of its intent to rely on testimony from [REDACTED] at trial are highly prejudicial to Plaintiffs. Accordingly, Plaintiffs intend to seek leave of Court to take 3.5-hour deposition of [REDACTED] in August. At our meet and confer, please be prepared to inform us whether Google intends to oppose this request.
- 7. Source Code Excerpts: Certain source code excerpts beginning with the Bates labels "GOOGEDVA-SC" were listed on both Google and DOJ's exhibit lists in the Eastern District of Virginia. It is Plaintiffs' understanding that these represent hard-copy printouts of source code excerpts. The Coordination Order defines "Shared Discovery" as "documents and data produced during fact discovery in a Coordinated Case and does not include Expert Discovery" and includes no exception for source code. These documents may be provided in hard-copy printouts to MDL Plaintiffs consistent with the source code protocol and the Modified Confidentiality Order. Please promptly produce to each plaintiff group in the MDL hard copies of all source code printouts identified as potential trial exhibits in Google and DOJ's filed exhibit lists in EDVA (EDVA ECF 894, 923).
- 8. DOJ Investigative File: A substantial number of the documents in the re-produced DOJ Investigative File, which was provided on hard drives in January, were not produced with corresponding load files. Please confirm that load files or indexes were not produced by the DOJ for these files in the first instance.

MDL Plaintiffs and individual plaintiff groups reserve the right to raise additional issues.

Thank you.

Izaak

**Izaak Earnhardt**

(he/him)

Associate

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